APPENDIX A

ORDER OF

the United States Court of Claims

No. 422-65

(Decided February 17, 1967)

D. R. SMALLEY & SONS, INC., v. THE UNITED STATES

Donald A. Moon, attorney of record for plaintiff.

Ray Goddard, with whom was **Assistant Attorney General Barefoot Sanders**, for defendant.

Before Cowen, **Chief Judge**, Laramore, Durfee, Davis, Collins, Skelton, and Nichols, **Judges**.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

SKELTON, **Judge**, delivered the opinion of the court:

The plaintiff, an Ohio Corporation engaged in the highway construction business, sued defendant for damages in the sum of $6,000,000 in connection with six contracts executed in 1956 and 1957 for the building of certain Federal-Aid Highway projects in the State of Ohio.

In two of the contracts the plaintiff was the principal contractor, and in the other four it was a subcontracor under Maxon Construction Company, Inc., the principal contractor, who is not a party to this suit. The State of Ohio was the other contracting party in all of the contracts. The United States was not a party to any of the contracts.

The agreements between plaintiff and the State of Ohio required the plaintiff to furnish all labor and materials and to build the highways involved in accordance with the plans

and specifications agreed upon by the parties for which the plaintiff would be paid the various sums of money specified in the respective contracts.

The projects were a part of the Federal-Aid Highway System of interstate highways on which the United States would reimburse the State of Ohio to the extent of the ninety per cent of the total cost in accordance with the various Federal-Aid Highway Acts passed by Congress.[1] The state would pay the other ten per cent of the total cost.

Plaintiff alleged that: the contracts were drafted pursuant to standards and regulations required by defendant; the defendant approved the contracts and they were executed with its express approval; and all changes in the contracts were required to be submitted to defendant for its approval.

During the course of the work on the projects, the plaintiff encountered many difficulties, financial and otherwise, and completed the work only after reorganizing its corporate structure and by subletting portions of the contracts to other contractors. It claims that it lost by way of damages on all six projects the sum of $2,923,573.22. A claim in this amount was filed with the Ohio Sundry Claims Board, which approved and paid the claim to the extent of $195,690, leaving $2,727,883.22 unpaid. The plaintiff has filed this suit to recover such balance, together with other alleged damages to which it claims it is entitled, all in to the total sum of $6,000,000.

The basis of plaintiff's claims against the State of Ohio and now against the United States was that during the work on the highway projects the state did not timely obtain rights-of-way nor remove obstructions therefrom, did not promptly provide time extensions as promised, required work to be done in wet and freezing weather, directed that work be done under traffic conditions, forced plaintiff to subcontract some of the work to others at increased costs, and admitted liability on certain phases of the projects that required redesign of the plans.

Plaintiff's theory of recovery against the defendant is that by reason of the contents of the Federal-Aid Highway Acts, **supra**, including the provision obligating the Government to

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[1]Federal-Aid Highway Act of 1956, Ch. 462, § 108(d), 70 Stat. 374; Federal-Aid Highways, 23 U.S.C. § 120(c) (1964).

reimburse a state to the extent of ninety per cent of the cost of any approved highway project completed in the state as a part of the Federal-Aid Highway System, together with acts of the defendant in connection with the projects under consideration here, made the defendant the real party in interest instead of the State of Ohio.

The plaintiff contends that the State of Ohio was the agent of defendant and that defendant is liable for all of the wrongful acts and omissions of the state in connection with the contracts. To support this claim, plaintiff points out that: the contracts were drafted pursuant to the regulations and requirements of defendant; the contracts were approved by defendant; the work was inspected and approved by defendant as it progressed; changes in plans were approved by defendant; the final completion of the work was inspected and approved by the defendant; and defendant agreed by the provisions of the law to pay the state (for the benefit of plaintiff) ninety per cent of the cost of the contracts. By reason of these claims, plaintiff asserts that it had express contracts with the defendant and in the alternative, the defendant was bound by implied contracts. Also, plaintiff says that defendant has deprived it of its property without remuneration contrary to the fifth and fourteenth amendments of the United States Constitution.

Defendant answered by saying there was no privity of contract between it and the plaintiff, and the defendant has not given its consent to be sued. It also pleads the sovereign act doctrine as a defense. We believe the defendant is correct as to these defenses and that they are controlling in the disposition of this case.

When Congress passed the Federal-Aid Highway Acts which obligated the Government to reimburse the states to the extent of ninety per cent of the cost of construction of any approved highway that was a part of the Federal interstate system of roads, it exercised sovereign powers of the Government. Likewise, the establishment of standards and requirements, the approval of the form of contract, the inspection of work, and the payment of ninety per cent of the cost of each project to the state involved by the Bureau of Public Roads, were sovereign acts of the Government and

were not directed solely to the plaintiff but affected the general public and were done for the common good and the general welfare.

It is well established that the Federal Government is not liable for damages resulting from sovereign acts performed by it in its sovereign capacity. **Horowitz v. United States,** 267 U.S. 458, 461 (1925); **Jones v. United States,** 1 Ct. Cl. 383 (1865).

The National Government makes many hundreds of grants each year to the various states, to municipalities, to schools and colleges and to other public organizations and agencies for many kinds of public works, including roads and highways. It requires the projects to be completed in accordance with certain standards before the proceeds of the grant will be paid. Otherwise the will of Congress would be thwarted and taxpayers' money would be wasted. See **Mahler v. United States,** 306 F. 2d 713, 716-22 (3rd Cir. 1962), **cert. denied,** 371 U.S. 923. These grants are in reality gifts or gratuities. It would be farfetched indeed to impose liability on the Government for the acts and omissions of the parties who contract to build the projects, simply because it requires the work to meet certain standards and upon approval thereof reimburses the public agency for a part of the costs.

The plaintiff contends that by these acts of defendant made the State of Ohio its agent and by reason thereof it had express contracts with defendant and defendant is liable for the wrongful acts and omissions of Ohio. We do not agree. Such sovereign acts of defendant do not in any way make the State of Ohio its agent as claimed by plaintiff. See **Eden Memorial Park Association v. United States,** 300 F. 2d 432, 439 (9th Cir. 1962), wherein the court stated:

> Moreover, analysis of the Federal-Aid Highways Act indicates that while close cooperation between the United States and the individual states was contemplated, the states or their agencies or officials were in projects authorized by that act. * * *

The defendant did not sign the contracts with the plaintiff and there were no negotiations or communications whatsoever between them. Consequently, there were no express contracts between them.

The same reasoning applies to plaintiff's alternative claim that defendant is liable because of implied contracts with plaintiff. The sovereign acts of defendant described above do not impose liability on defendant for the acts and omissions of the State of Ohio on the theory if implied contract. The contracts were between the state and plaintiff.

Accordingly, since there was no privity of contract, express or implied, between plaintiff and defendant, the defendant is not liable in contract for the damages claimed by plaintiff.

We now come to the claim of plaintiff that defendant has deprived it of its property without compensation in violation of the fifth and fourteenth amendments to the Constitution. All of the acts and omissions complained of by plaintiff were those of the State of Ohio. It does not allege a single affirmative act on the part of defendant that deprived it of any of its property nor that interferred with or disturbed its property rights in any way. Without such allegations, plaintiff cannot recover damages from defendant on this theory. **Biggs Rental Co. v. United States**, 173 Ct. Cl. 789, 796, 353 F. 2d 1013, 1017 (1965), **cert. denied**, 384 U. S. 927 (1966).

Since we have held that the defendant is not liable to plaintiff by reason of its sovereign acts, and there is no privity of contract between them, express or implied, and defendant has not deprived plaintiff of its property in violation of the fifth and fourteenth amendments to the Constitution, it follows that plaintiff cannot recover.

Accordingly, defendant's motion for summary judgment is hereby granted and plaintiff's petition is dismissed.

APPENDIX B

VOL. I. TITLE 23, UNITED STATES CODE "HIGHWAYS", and SECTIONS 2, 3, 4, and 5, of PUBLIC LAW 85—767, AUG. 27, 1958

TITLE 23, UNITED STATES CODE—"HIGHWAYS"

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1 Repealed by sec. 21(d) of Public Law 86-70, June 25, 1959 (73 Stat. 141).
2 New sec. added by sec. 4 of Public Law 85-857, July 14, 1960 (74 Stat. 522).

Chapter 1—FEDERAL-AID HIGHWAYS

Sec. 101. Definitions and declaration of policy

(a) As used in this title, unless the context requires otherwise—

The term "apportionment" in accordance with section 104 of this title includes unexpended apportionments made under prior acts.

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the Coast and Geodetic Survey in the Department of Commerce), costs of rights-of-way, and elimination of hazards of railway grade crossings.

The term "county" includes corresponding units of government under any other name in States which do not have county organizations, and likewise in those States in which the county government does not have jurisdiction over highways it may be construed to mean any local government unit vested with jurisdiction over local highways.

The term "forest road or trail" means a road or trail wholly or partly within or adjacent to and serving the national forests.

The term "forest development roads and trails" means those forest roads or trails of primary importance for the protection, administration, and utilization of the national forests, or where necessary, for the use and development of the resources upon which communities within or adjacent to the national forests are dependent.

The term "forest highway" means a forest road which is of primary importance to the States, counties, or communities within, adjoining, or adjacent to the national forests.

The term "highway" includes roads, streets, and parkways, and also includes rights-of-way, bridges, railroad-highway crossings, tunnels, drainage structure, signs, guardrails, and protective structures, in connection with highways. It further includes that portion of any interstate or international bridge or

tunnel and the appproaches thereto, the cost of which is assumed by a State highway department including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

The term "Federal-aid highways" means highways located on one of the Federal-aid systems described in section 103 of this title.

The term "Indian reservation roads and bridges" means roads and bridges that are located within an Indian reservation or that provide access to an Indian reservation or Indian land, and that are jointly designated by the Secretary of the Interior and the Secretary as a part of the Indian Bureau road system.

The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

The term "park roads and trails" means those roads or trails, including the necessary bridges, located in national parks or monuments, now or hereafter established, or in other areas administered by the National Park Service of the Department of the Interior (excluding parkways authorized by Acts of Congress) and also including approach roads to national parks or monuments authorized by the Act of January 31, 1931 (46 Stat. 1053), as amended.

The term "parkway" as used in chapter 2 of this title means a parkway authorized by an Act of Congress on lands to which title is vested in the United States.

The term "project" means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed.

The term "project agreement" means the formal instrument to be executed by the State highway department and the Secretary as required by the provisions of subsection (a) of section 110 of this title.

The term "public lands development roads and trails" means those roads or trails which the Secretary of the Interior determines are of primary importance for the development,

protection, administration, and utilization of public lands and resources under his control.[7]

The term "public lands highways" means main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations.

The term "rural areas" means all areas of a State not included in urban areas.

The term "Secretary" means Secretary of Commerce.

The term "State" means any one of the fifty States, the District of Columbia, or Puerto Rico.[8]

The term "State funds" includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State highway department.

The term "State highway department" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

The term "Federal-aid system" means any one of the Federal-aid highway systems described in section 103 of this title.

The term "Federal-aid primary system" means the Federal-aid highway system described in subsection (b) of section 103 of this title.

The term "Federal-aid secondary system" means the Federal-aid highway system described in subsection (c) of section 103 of this title.

The term "Interstate System" means the National System of Interstate and Defense Highways described in subsection (d) of section 103 of this title.

The term "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available Federal census, within boundaries to be fixed by a State highway department subject to the approval of the Secretary.

(b) It is hereby declared to be in the national interest to

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[7] Amended by sec. 6(a) of Public Law 87-866, Oct. 23, 1962 (76 Stat. 1145).

[8] Amended by sec. 21(e) (1) of Public Law 86-70, June 25, 1959 (73 Stat. 141), and by sec. 17(a) of Public Law 86-624, July 12, 1960 (74 Stat. 411).

accelerate the construction of the Federal-aid highway systems, including the National System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

It is hereby declared that the prompt and early completion of the National System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the "Interstate System," is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the fifteen years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending June 30, 1971, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire System in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.[9]

Sec. 102. Authorizations

The provisions of this title apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds upon the Federal-aid systems. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.

Sec. 103. Federal-aid systems

(a) For the purposes of this title, the three Federal-aid systems, the primary and secondary systems, and the Inter-

[9] Amended by sec. 3 of Public Law 88-423, Aug. 13, 1964 (78 Stat. 397).

state System, are continued pursuant to the provisions of this section.

(b) The Federal-aid primary system shall consist of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary as provided by subsection (e) of this section. This system shall not exceed 7 per centum of the total highway mileage of such State, exclusive of mileage within national forests, Indian, or other Federal reservations and within urban areas, as shown by the records of the State highway department on November 9, 1921. Whenever provision has been made by any State for the completion and maintenance of 90 per centum of its Federal-aid primary system, as originally designated, said State through its State highway department by and with the approval of the Secretary is authorized to increase the mileage of its Federal-aid primary system by additional mileage equal to not more than 1 per centum of the total mileage of said State as shown by the records on November 9, 1921. Thereafter, it may make like 1 per centum increases in the mileage of its Federal-aid primary system whenever provision has been made for the completion and maintenance of 90 per centum of the entire system, including the additional mileage previously authorized. This system may be located both in rural and urban areas. The mileage limitations in this paragraph shall not apply to the District of Columbia, Hawaii, Alaska, or Puerto Rico.

(c) The Federal-aid secondary system shall be selected by the State highway departments and the appropriate local road officials in cooperation with each other, subject to approval by the Secretary as provided in subsection (e) of this section. In making such selections, farm-to-market roads, rural mail routes, public school bus routes, local rural roads, county roads, township roads, and roads of the county road class may be included, so long as they are not on the Federal-aid primary system or the Interstate System. This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area.[10]

[10] Amended by sec. 8(a) of Public Law 87-866, Oct. 23, 1962 (76 Stat. 1145).

(d) The Interstate System shall be designated within the United States, including the District of Columbia and it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of this system, to the greatest extent possible, shall be selected by joint action of the State highway departments of each State and the adjoining States, subject to the approval by the Secretary as provided in subsection (e) of this section. All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsecion (b) of this section. This system may be located both in rural and urban areas.[11]

(e) The Secretary shall have authority to approve in whole or in part the Federal-aid primary system, the Federal-aid secondary system, and the Interstate System, as and when such systems or portions thereof are designated, or to require modifications or revisions thereof. No Federal-aid system or portion thereof shall be eligible for projects in which Federal funds participate until approved by the Secretary.

(f) See footnote.[12]

(g) See footnote.[13]

Sec. 104. Apportionment

(a) Whenever an apportionment is made of the sums authorized to be appropriated for expenditure upon the Federal-aid systems, the Secretary shall deduct a sum, in such amount not to exceed 3¾ per centum of all sums so authorized, as the Secretary may deem necessary for administering the provisions of law to be financed from appropriations for the Federal-aid systems and for carrying on the research authorized by subsections (a) and (b) of section 307 of this title. In

[11] Amended by sec. 17(c) of Public Law 86-624, July 12, 1960

[12] Repealed by sec. 21 (d) (1) of Public Law 86-70, June 25, 1959 (73 Stat. 141).

[13] Repealed by sec. 17(b) of Public Law 86-624, July 12, 1960 (74 Stat. 411).

making such determination, the Secretary shall take into account the unexpended balance of any sums deducted for such purposes in prior years. The sum so deducted shall be available for expenditure from the unexpended balance of any appropriation made at any time for expenditure upon the federal-aid systems, until such sum has been expended.

(b) On or before January 1 next preceding the commencement of each fiscal year, except as provided in paragraphs (4) and (5) of this subsection, the Secretary, after making the deduction authorized by subsection (a) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for that fiscal year, among the several States in the following manner:

(1) For the Federal-aid primary system:

One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery and star routes in all the States at the close of the next preceding calendar year, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary. No State shall receive less than one-half of 1 per centum of each year's apportionment.[14, 15]

(2) For the Federal-aid secondary system:

One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the rural population of each State bears to the total rural population of all the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and star routes, certified as above provided, in each States bears to the total mileage of rural delivery and star routes in all the States. No State

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14, 16 Amended by sec. 21(e) (2) of Public Law 86-70, June 25, 1959 (73 Stat. 141).

15 Amended by sec. 10(a) of Public Law 87-866, Oct. 23, 1962 (76 Stat. 1145).

shall receive less than one-half of 1 per centum of each year's apportionment.[16]

(3) For extensions of the Federal-aid primary and Federal-aid secondary systems within urban areas:

In the ratio which the population in municipalities and other urban places of five thousand or more in each State bears to the total population in municipalities and other urban places of five thousand or more in all the States as shown by the latest available Federal census.[17]

(4) For the Interstate System, for the fiscal years ending June 30, 1957, June 30, 1958, and June 30, 1959:

One-half in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census, except that no States shall receive less than three-fourths of 1 per centum of the funds so apportioned; and one-half in the manner provided in paragraph (1) of this subsection. The sums authorized by section 108(b) of the Federal-Aid Highway Act of 1956 for the fiscal years ending June 30, 1958, and June 30, 1959, shall be apportioned on a date not less than six months and not more than twelve months in advance of the beginning of the fiscal year for which authorized.

(5) For the Interstate System for the fiscal years 1960 through 1971:

For the fiscal years 1960 through 1966, in the ratio which the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of completing the Interstate System in all of the States. For the fiscal years 1967 through 1971, in the ratio which the Federal share of the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of the Federal share of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1971, inclusive, shall be made on a date as far in advance of the beginning of the fiscal year for which author-

[17] Amended by sec. 2 of Public Law 88-157, Oct. 24, 1963 (77 Stat. 276).

ized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized. As soon as the standards provided for in subsection (b) of section 109 of this title have been adopted, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary shall transmit such estimates to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within 10 days subsequent to Jan. 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. The Secretary shall make a revised estimate of the cost of completing the ten designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1965. Upon the approval of such estimate by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit

the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1968. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal year ending June 30, 1970. The Secretary shall make a final revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1969. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal year ending June 30, 1971. Whenever the Secretary, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives.[18, 19, 21, 22, 23]

(c) Not more than 20 per centum of the amount apportioned in any fiscal year, commencing with the apportionment of funds authorized to be appropriated under subsection (a) of section 102 of the Federal-Aid Highway Act of 1956 (70 Stat. 374), to each State in accordance with paragraphs (1), (2), or (3) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under any other of such paragraphs if such a transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. The total of such transfers shall not increase the original apportionment under any of such paragraphs by

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[18, 22] Amended by sec. 3(a) and (b) of Public Law 88-157, Oct. 24, 1963 (77 Stat. 276).

[19] Approval of cost estimate as a basis for making I.S. apportionments for fiscal years ending June 30, 1960, 1961, and 1962, by sec. 8 of Public Law 85-381, Apr. 16, 1958 (72 Stat. 89); sec. 1 of Public Law 85-899, Sept. 2, 1958 (72 Stat. 1725); and sec. 103 of Public Law 86-342, Sept. 21, 1959 (73 Stat. 611); for fiscal years ending June 30, 1963, 1964, 1965, and 1966, by sec. 102 of Public Law 87-61, June 29, 1961 (75 Stat. 122); and for fiscal year ending June 30, 1967, by sec. 2 of Public Law 89-139, Oct. 22, 1965 (79 Stat. 578).

[21] Amended by sec. 4(a) of Public Law 88-423, Aug. 13, 1964 (78 Stat. 397).

[23] Amended by sec. 8(g) of Public Law 86-657, July 14, 1960 (74 Stat. 522).

more than 20 per centum. Nothing contained in this subsection shall alter or impair the authority contained in subsection (d) of this section.

(d) Any funds which are apportioned under paragraph (2) of subsection (b) of this section for the Federal-aid secondary system to a State in which all public roads and highways are under the control and supervision of the State highway department may, if the State highway department and the Secretary jointly agree that such funds are not needed for the Federal-aid secondary system, be expended for projects on another Federal-aid system.

(e) On or before January 1 preceding the commencement of each fiscal year, the Secretary shall certify to each of the State highway departments the sums which he has apportioned hereunder to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section.

Sec. 105. Programs

(a) As soon as practicable after the apportionments for the Federal-aid systems have been made for any fiscal year, the State highway department of any State desiring to avail itself of the benefits of this chapter shall submit to the Secretary for his approval a program or programs of proposed projects for the utilization of the funds apportioned. The Secretary shall act upon programs submitted to him as soon as practicable after the same have been submitted. The Secretary may approve a program in whole or in part, but he shall not approve any project in a proposed program which is not located upon an approved Federal-aid system.

(b) In approving programs for projects on the Federal-aid secondary system, the Secretary shall require, except in States where all public roads and highways are under the control and supervision of the State highway department, that such project be selected by the State highway department and the appropriate local officials in cooperation with each other.

(c) In approving programs for projects on the Federal-aid primary system, the Secretary shall give preference to such projects as will expedite the completion of an adequate and connected system of highways interstate in character.

(d) In approving programs for projects under this chapter, the Secretary may give priority of approval to, and expedite the construction of, projects that are recommended as important to the national defense by the Secretary of Defense, or other official authorized by the President to make such recommendation.

(e) See footnote.[24]

Sec. 106. Plans, specifications, and estimates

(a) Except as provided in section 117 of this title, the State highway department shall submit to the Secretary for his approval as soon as practicable after program approval, such surveys, plans, specifications, and estimates for each proposed project included in an approved program as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. In taking such action, the Secretary shall be guided by the provisions of section 109 of this title.

(b) In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, shall be determined by the State highway department and the appropriate local officials in cooperation with each other.

(c) Items included in any such estimate for construction engineering shall not exceed 10 per centum of the total estimated cost of a project financed with Federal-aid primary, secondary, or urban funds, after excluding from such total estimated cost, the estimated costs of rights-of-way, preliminary engineering, and construction engineering: Provided, That such limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary. For any project financed with interstate funds, such limitation shall be 10 per centum.[25]

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[24] Repealed by sec. 17(b) of Public Law 86-624, July 12, 1960 (74 Stat. 411).

[25] Amended by sec. 7(a) of Public Law 88-157, Oct. 24, 1963 (77 Stat. 276).

Sec. 107. Acquisition of rights-of-way — Interstate System

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term "interests in lands," the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including the Act of Feruary 26, 1931, 46 Stat. 1421), if—

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the Secretary an amount equal to 10 per centum of the costs incurred by the Secretary, in acquiring such lands or interests in lands, or such lesser percentage which represents the State's pro rata share of project costs as determined in accordance with subsection (c) of section 120 of this title.

The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be de-

posited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108(b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of assess, to the State highway department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State highway department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary ,the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

Sec. 108. Advance acquisition of rights-of-way

(a) For the purpose of facilitating the acquisition of rights-of-way on any of the Federal-aid highway systems, including the Interstate System, in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State for expenditure on any of the

Federal-aid highway systems, including the Interstate System, for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding seven years following the fiscal year in which such request is made.[26]

(b) Federal participation in the cost of rights-of-way acquired under this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

Sec. 109. Standards

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State highway departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.[27]

(c) Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to

[26] Amended by sec. 1 of Public Law 86-35, May 29, 1959 (73 Stat. 62)
[27] Amended by sec. 4 of Public Law 88-157, Oct. 24, 1963 (77 Stat. 276).

specifications that will provide all-weather service and permit maintenance at a reasonable cost.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices, complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to the reasonably necessary for road surfaces, median strips, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

Sec. 110 Project agreements

(a) As soon as practicable after the plans, specifications, and estimates for a specific project have been approved, the Secretary shall enter into a formal project agreement with the State highway department concerning the construction and maintenance of such project. Such project agreement shall make provision for State funds required for the State's pro rata share of the cost of construction of such project and for the maintenance thereof after completion of construction.

(b) The Secretary may rely upon representations made by the State highway department with respect to the arrange-

ments or agreements made by the State highway department and appropriate local officials where a part of the project is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.

Sec. 111. Agreements relating to use of and access to rights-of-way—Interstate System

All agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System.[28, 29]

Sec. 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State highway department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. **The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.**

(b) Construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating

[28] Amended by sec. 104(a) of Public Law 87-61, June 29, 1961 (75 Stat. 122).

[29] Revision of prior agreements, see sec. 104(b) of Public Law 87-61, June 29, 1961 (75 Stat. 122).

to such project, some other method is in the public interest. All such findings shall be reported promptly in writing to the Committees on Public Works of the Senate and the House of Representatives.

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State highway department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117 of this title.

Sec. 113. Prevailing rate of wage—Interstate System

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the initial construction work performed on highway projects on the Interstate System authorized under section 108(b) of the Federal-Aid Highway Act of 1956, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of August 30, 1935, known as the Davis-Bacon Act (40 U.S.C., sec. 276a).

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on the Interstate System is to be performed. After giving due regard to the in-

formation thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

Sec. 114. Construction

(a) The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. **Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary.** The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.[30]

(b) Convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.

Sec. 115. Construction by States in advance of apportionment—Interstate System

(a) When a State has obligated all funds apportioned to it under subsection (b) (4) and (5) of section 104 of this title, and proceeds to construct any project without the aid of Federal funds, including one or more parts of any project, on the Interstate System as designated at that time, in accordance with all procedures and all requirements applicable to projects financed with Interstate System funds authorized to be appropriated under subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, except insofar as such procedures

[30] Amended by sec. 8(f) of Public Law 86-657, July 14, 1960 (74 Stat. 522).

and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under subsection (b) (4) and (5) of section 104 of this title if:

(1) prior to the construction of the project the Secretary shall have approved the plans and specifications therefor in the same manner as other projects on the Interstate System, and

(2) the project shall conform to the standards adopted under subsection (b) of section 109 of this title.

(b) In determining the apportionment for any fiscal year under the provisions of subsection (b) (5) of section 104 of this title, any such project constructed by a State without the aid of Federal funds shall not be considered completed until an application under the provisions of this section with respect to such project has been approved by the Secretary.

Sec. 118. Availability of sums apportioned

(a) On and after the date that the Secretary has certified to each State highway department the sums apportioned to each Federal-aid system or part thereof pursuant to an authorization under this title, or under prior Acts, such sums shall be available for expenditure under the provisions of this title.

(b) Such sums shall continue available for expenditure in that State for the appropriate Federal-aid system or part thereof for a period of two years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period shall lapse, except that any amount apportioned to the States for the Interstate System under subsection (b) (4) and (5) of section 104 of this title remaining unexpended at the end of the period during which it is available under this section shall lapse and shall immediately be reapportioned among the other States in accordance with the provisions of subsection (b) (5) of section 104 of this title. Such sums for any fiscal year shall be deemed to be expended if a sum equal to the

total of the sums apportioned to the State for such fiscal year and previous fiscal years is covered by formal project agreements providing for the expenditure of funds authorized by each Act which contains provisions authorizing the appropriation of funds for Federal-aid highways. Any Federal-aid highway funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds, primary, secondary, urban, or interstate, previously apportioned to the State and be immediately available for expenditure.

(c) The total payments to any State shall not at any time during a current fiscal year exceed the total of all apportionments to such State in accordance with section 104 of this title for such fiscal year and all preceding fiscal years.

Sec. 119. See footnote.[33]

Sec. 120. Federal share payable

(a) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with primary, secondary, or urban funds, on the Federal-aid primary system and the Federal-aid secondary system shall not exceed 50 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area.[34, 35]

(b) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with interstate funds on the Interstate System, authorized to be appropriated prior to June 29, 1956, shall not exceed 60 per centum of the cost of construction, except that in the case of any State containing unappropriated and un-

[33] Repealed by sec. 21(d) (3) of Public Law 86-70, June 25, 1959 (73 Stat. 141).

[34] Amended by sec. 21(e) (4) of Public Law 86-70, June 25, 1959 (73 Stat. 141).

[35] Amended by sec. 3 of Public Law 89-657, July 14, 1960 (74 Stat. 522).

reserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area. The provisions of subsection (a) of this section shall apply to any project financed with funds authorized by the provisions of section 2 of the Federal-Aid Highway Act of 1952.

(c) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project on the Interstate System provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to 90 per centum of the total cost thereof, plus a percentage of the remaining 10 per centum of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area, except that such Federal share payable on any project in any State shall not exceed 95 per centum of the total cost of such project.

(d) The Federal share payable on account of any project for the elimination of hazards of railway-highway crossings, as more fully described and subject to the conditions and limitations set forth in section 130 of this title, may amount to 100 per centum of the cost of construction of such projects, except that not more than 50 per centum of the right-of-way and property damage costs, paid from public funds, on any such project, may be paid from sums apportioned in accordance with section 104 of this title: **Provided,** That not more than 10 per centum of all the sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection.

(e) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.

(f) The Federal share payable on account of any repair or reconstruction provided for by funds made available under

section 125 of this title shall not exceed 50 per centum of the cost thereof: **Provided,** That, in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area: **Provided further,** That the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads may amount to 100 per centum of the cost thereof, whether or not such highways, roads, or trails are on any Federal-aid highway system. Any project agreement for which the final voucher has not been approved by the Secretary on or before the date of this Act may be modified to provide for the Federal share authorized herein.[36, 37]

(g) The Secretary is authorized to cooperate with the State highway departments and with the Department of the Interior in the construction of Federal-aid highways within Indian reservations and national parks and monuments under the jurisdiction of the Department of the Interior and to pay the amount assumed therefor from the funds apportioned in accordance with section 104 of this title to the State wherein the reservations and national parks and monuments are located.

(h) See footnote.[38]

Sec. 121. Payment to States for construction

(a) The Secretary may, in his discretion, from time to time as the work progresses, make payments to a State for costs of construction incurred by it on a project. These payments shall at no time exceed the Federal share of the costs of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

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[36] Amended by sec. 107(b) of Public Law 86-342, Sept. 21, 1959 (73) Stat. 611).

[37] Amended by Public Law 88-658, Oct. 13, 1964 (78 Stat. 1090).

[38] Repealed by sec. 21(d) (4) of Public Law 86-70, June 25, 1959 (73 Stat. 141).

(b) After completion of a project in accordance with the plans and specifications, and approval of the final voucher by the Secretary, a State shall be entitled to payment out of the appropriate sums apportioned to it of the unpaid balance of the Federal share payable on account of such project.

(c) No payment shall be made under this chapter, except for a project located on a Federal-aid system and covered by a project agreement. No final payment shall be made to a State for its costs of construction of a project until the completion of the construction has been approved by the Secretary following inspections pursuant to section 114(a) of this title.

(d) In making payments pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments contained in sections 120 and 130 of this title. Payments for construction engineering on any project financed with Federal-aid primary, secondary, or urban funds shall not exceed 10 per centum of the Federal share of the cost of construction of such project after excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering: **Provided,** That such limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary. For any project financed with interstate funds, such limitation shall be 10 per centum.[39]

(e) Such payments shall be made to such official or officials or depository as may be designated by the State highway department and authorized under the laws of the State to receive public funds of the State.

Sec. 122. Payment to States for bond retirement

Any State that shall use the proceeds of bonds issued by the State, county, city, or other political subdivision of the State for the construction of one or more projects on the Federal-aid primary or Interstate System, or extensions of any of the Federal-aid highway systems in urban areas, may claim payment of any portion of the sums apportioned to it for expenditure on such system to aid in the retirement of the principal of such bonds at their maturities, to the extent that the proceeds of such bonds have been actually expended in the construction of

[39] Amended by sec. 7(b) of Public Law 88-157, Oct. 24, 1963 (77 Stat. 276).

one or more of such projects. Such claim for payment may be made only when all of the provisions of this title have been complied with to the same extent and with the same effect as though payment were to be made to the State under section 121 of this title, instead of this section, and the Federal share payable shall not exceed the pro rata basis of payment authorized in section 120 of this title. This section shall not be construed as a commitment or obligation on the part of the United States to provide funds for the payment of the principal of any such bonds.

Sec. 123. Relocation of utility facilities

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State.

(b) The term "utility," for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term "cost of relocation," for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

Sec. 124. Advances to States

If the Secretary shall determine that it is necessary for the expeditious completion of projects on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State highway department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the

State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State highway department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects.

Sec. 132. Payments on Federal-aid projects undertaken by a Federal agency

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligations so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.[48]

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[48] Amended by sec. 4(a) of Public Law 86-657, July 14, 1960 (74 Stat. 522).

Sec. 302. State highway department

(a) Any State desiring to avail itself of the provisions of this title shall have a State highway department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. Among other things, the organization shall include a secondary road unit.

(b) The State highway department may arrange with a county or group of counties for competent highway engineering personnel suitably organized and equipped to the satisfaction of the State highway department, to supervise construction and maintenance on a county-unit or group-unit basis, for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof.

Sec. 303. Bureau organization

(a) The Bureau of Public Roads shall be in the Department of Commerce as a primary unit administered by the Federal Highway Administrator, appointed by the President by and with the advice and consent of the Senate. The Administrator shall perform such duties as the Secretary of Commerce may prescribe or as may be required by law. There shall be a Deputy Federal Highway Administrator, who shall be appointed by the Secretary and perform such duties as may be prescribed by the Federal Highway Administrator.[61, 62]

(b) The Secretary is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures and apparatus, to advertise in the city of Washington for work to be performed in areas adjacent thereto, and to incur, and authorize the incurring of, such travel and other expenses as he may deem necessary for carrying out the functions under this title.

(c) The Secretary is authorized to procure temporary serv-

[61] Amended by sec. 1 of Public Law 87-392, Oct. 4, 1961 (75 Stat. 822).

[62] Amended by sec. 305(24) of Public Law 88-426, Aug. 14, 1964 (78 Stat. 400).

ices in accordance with the provisions of section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates for individuals not in excess of $100 per diem.

Sec. 304. Participation by small business enterprises

It is declared to be in the national interest to encourage and develop the actual and potential capacity of small business and to utilize this important segment of our economy to the fullest practicable extent in construction of the Federal-aid highway systems, including the Interstate System. In order to carry out that intent and encourage full and free competition, the Secretary should assist, insofar as feasible, small business enterprises in obtaining contracts in connection with the prosecution of the highway program.

Sec. 311. Highway improvements strategically important to the national defense

Funds made available under subsection (a) of section 104 of this title may be used to pay the entire engineering costs of the surveys, plans, specifications, estimates, and supervision of construction of projects for such urgent improvements of highways strategically important from the standpoint of the national defense as may be undertaken on the order of the Secretary and as the result of request of the Secrtary of Defense or such other official as the President may designate. With the consent of a State, funds made available under subsection (b) of section of this title may be used to the extent deemed necessary and advisable by the Secretary to carry out the provisions of this section.

Sec. 312. Detail of Army, Navy, and Air Force officers

The Secretary of Defense, upon request of the Secretary, is authorized to make temporary details to the Bureau of Public Roads of officers of the Army, the Navy, and the Air Force, without additional compensation, for technical advice and for consultation regarding highway needs for the national defense. Travel and subsistence expenses of officers so detailed shall be paid from appropriations available to the Department of Commerce on the same basis as authorized by law and by regulations of the Department of Defense for such officers.

Sec. 315. Rules, regulations, and recommendations

Except as provided in sections 204(d), 205(a), 206(b), 207(b), and 208(c) of this title, the Secretary is authorized to prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this title. The Secretary may make such recommendations to the Congress and State highway departments as he deems necessary for preserving and protecting the highways and insuring the safety of traffic thereon.

APPENDIX C

VOL. IV. REGULATIONS, STANDARDS, AND STATEMENTS OF POLICY

ADMINISTRATION OF FEDERAL AID FOR HIGHWAYS

23 C.F.R., Ch. 1, Pt. 1

Part 1 of Chapter 1 of Title 23 of the Code of Federal Regulations is revised to read as follows:[1]

Sec.

1.1 Purpose.
1.2 Definitions.
1.3 Federal-State cooperation; Authority of State highway departments.
1.4 Coopration of governmental instrumentalities.
1.5 Information furnished by State highway departments.
1.6 Federal-aid highway systems.
1.7 Urban area boundaries.
1.8 Programs of proposed projects.
1.9 Limitation on Federal participation.
1.10 Surveys, plans, specifications and estimates.
1.11 Engineering services.
1.12 Authorizations to proceed with projects.
1.13 Changes in project work and cost.
1.14 Project agreements.
1.15 Construction contracts and force account work.
1.16 Licensing and qualification of contrators.
1.17 Health and safety.
1.18 Furnishing of materials.
1.19 Restrictions upon materials.
1.20 Surety bonds and insurance.
1.21 Subcontracting.
1.22 Patented or proprietary items.
1.23 Rights-of-way.
1.24 Labor and employment.
1.25 Railway-highway crossing projects.
1.26 Highway planning and research projects.
1.27 Maintenance.
1.28 Diversion of highway revenues.
1.29 Vehicle weight and width limitation.
1.30 Records and documents.
1.31 Payments.
1.32 Policies and procedures..

1 Published in the Federal Register, 25 F. R. 4162, May 11, 1960.

1.33 Conflicts of interest.
1.34 Secondary road plan.
1.35 Advertising.
1.36 Compliance with Federal laws and regulations.
1.37 Delegation of authority.
1.38 Application of regulations.

AUTHORITY: §§ 1.1 to 1.38 issued under sec. 315, 72 Stat. 915, 23 U.S.C. 315.

Sec. 1.1 Purpose

The purpose of the regulations in this part is to implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways.

Sec. 1.2 Definitions

(a) Terms defined in 23 U.S.C. 101(a), shall have the same meaning where used in the regulations in this part, except as modified herein.

(b) The following terms where used in the regulations in this part shall have the following meaning:

Administrator. The Federal Highway Administrator.

Advertising Policy. The national policy relating to the regulation of outdoor advertising declared in title 23 U.S.C. 131.

Advertising Standards. The "National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways" promulgated by the Secretary (Part 20 of this chapter).

Commissioner. The Commissioner of Public Roads.

Federal laws. The provisions of title 23, United States Code, and all other Federal laws, heretofore or hereafter enacted, relating to Federal aid for highways.

Latest available Federal Census. The latest available Federal decennial census, except for the establishment of urban areas.

Project. An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.

Secondary road plan. A plan for administration of Federal aid for highways on the Federal-aid secondary highway system pursuant to 23 U.S.C. 117.

Secretary. The Secretary of Commerce.

State. Any State of the United States, the District of Columbia and Puerto Rico.

Urban area. An area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available published official Federal census, decennial or special, within boundaries to be fixed by a State highway department, subject to the approval of the Administrator.

Sec. 1.3. Federal-State cooperation; authority of State highway departments

The Administrator shall cooperate with the States, through their respective State highway departments, in the construction of Federal-aid highways. Each State highway department, maintained in conformity with 23 U.S.C. 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.

Sec. 1.4. Cooperation of governmental instrumentalities

The State highway department shall be responsible for any project to be undertaken with the cooperation of, or with funds provided by, any other governmental instrumentality.

Sec. 1.5. Information furnished by State highway departments

At the request of the Administrator the State highway department shall furnish to him such information as the Administrator shall deem desirable in administering the Federal-aid highway program.

Sec. 1.6 Federal-aid highway systems

(a) **Selection or designation.** To insure continuity in the direction of expenditures of available funds, system of Federal-aid highways are selected or designated by any State that desires to avail itself through its State highway department, of the benefits of Federal aid for highways. Upon approval by the Administrator of the selections or designations by a State highway department, such highways shall become portions of

the respective Federal-aid highway systems, and all Federal-aid apportionments shall be expanded thereon.

(b) **Revisions.** A State highway department may propose revisions, including additions, deletions or other changes, in the routes comprising the approved Federal-aid highway systems. Any such revision shall become effective only upon approval thereof by the Administrator upon a determination that such revision is in the public interest and consistent with Federal laws. There is no predetermined time limit for the submission of the full selection of the systems.

(c) **Selection considerations.** Each Federal-aid system shall be so selected or designated as to promote the general welfare and the national and civil defense and to become the pattern for a long-range program of highway development to serve the major classes of highway traffic broadly identified as (1) interstate or interregional; (2) city-to-city primary, either interstate or intrastate; (3) rural secondary or farm-to-market; and (4) intraurban. The conservation and development of natural resources, the advancement of economic and social values, and the promotion of desirable land utilization, as well as the existing and potential highway traffic and other pertinent criteria are to be considered when selecting highways to be added to a Federal-aid system or when proposing revisions of a previously approved Federal-aid system.

(d) **Identity.** The Federal-aid highway systems as now constituted and approved are identified as:

(1) The Interstate System, as described in 23 U.S.C. 103(d), comprised of highways of the highest importance to the nation;

(2) The Federal-aid primary system, as described in 23 U.S.C. 103(b), comprised of important city-to-city, interstate and intrastate highways, serving essentially through traffic; and

(3) The Federal-aid secondary system, as described in 23 U.S.C. 103(c), not to exceed in any State at one time a mileage that can be initially improved within a reasonable period of years and thereafter maintained with income expected to be available.

(e) **Integration.** The highways of the Federal-aid systems shall form integrated and connected networks in each State

and nationwide. The individual routes of Federal-aid systems that cross the boundary line between contiguous States are to connect at the boundary line, and except in unusual cases the identity of the Federal-aid system for any such route shall be the same in the States involved.

Sec. 1.7 Urban area boundaries

Boundaries of an urban area shall be submitted by the State highway department and be approved by the Administrator prior to the inclusion in a program of any project wholly or partly in such area involving funds authorized for and limited to urban areas.

Sec. 1.8 Programs of proposed projects

Each State highway department shall prepare and submit to the Administrator, for his approval, detailed programs of proposed projects in such form and supported by such information as the Administrator may require. The Administrator shall not authorize any State to proceed with any project, or part thereof, until the program which includes such project has been approved.

Sec. 1.9. Limitation on Federal participation

Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this part, and policies and procedures prescribed by the Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost.

Sec. 1.10. Surveys, plans, specifications, and estimates

(a) **Preparation.** Surveys, plans, specifications and estimates shall be prepared by or under the immediate direction of the State highway department and shall be of such content and form as prescribed by the Administrator.

(b) **Approval.** No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until plans, specifications, and estimates have been submitted to and approved by the Administrator and the State has been so notified.

Sec. 1.11 Engineering services

(a) **Federal participation.** Costs of engineering services performed by the State highway department or any instrumentality or entity referred to in paragraphs (b) and (c) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects. Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraphs (b) and (c) of this section shall not be eligible for Federal participation.

(b) **Government engineering organizations.** The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any project.

(c) **Railroad and utility engineering organizations.** The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of the affected railroad companies for railway-highway crossing projects and of the affected utility companies for projects involving utility installations.

(d) **Private engineering organizations.** Private engineering organizations may be utilized on projects in accordance with requirements prescribed by the Administrator.

(e) **Responsibility of the State highway department.** The State highway department is not relieved of its responsibilities under Federal law and the regulations in this part in the event it utilizes the services of any engineering organization under paragraphs (b), (c) or (d) of this section.

Sec. 1.12. Authorizations to proceed with projects

No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for contract, prior to authorization thereof by the Administrator.

Sec. 1.13. Changes in project work and cost

Subsequent to authorization by the Administrator to proceed with a project or any undertaking thereunder, no change

shall be made which will increase the cost of the project to the Federal Government or alter the termini, character or scope of the work without prior authorization by the Administrator.

Sec. 1.14. Project agreements

Project agreements, and modifications thereof, shall be in forms satisfactory to the Administrator, evidencing acceptance by the State highway department of conditions to payment of Federal funds, as prescribed by Federal laws and the regulations in this part, and the amount of Federal funds obligated.

Sec. 1.15. Construction contracts and force account work

(a) **Competitive bidding.** Except as provided in paragraph (b) hereof or when the Administrator finds that because of unusual circumstances some other method is in the public interest, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway department shall assure opportunity for free, open and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with procedures and requirements prescribed by the Administrator.

(b) **Force account work.** When the Administrator finds that it is in the public interest, construction work may be performed by force account pursuant to requirements and procedures prescribed by him. Before such finding is made, the State highway department shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and economically.

Sec. 1.16 Licensing and qualification of contractors

With respect to Federal-aid projects, no procedure or requirement for prequalification, qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This,

however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by or may be awarded to a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's experience, personnel, equipment, financial resources, and performance record.

Sec. 1.17. Health and safety

Contracts for projects shall include provisions designed (a) to insure full compliance with all applicable Federal, State and local laws governing safety, health and sanitation, and (b) to require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

Sec. 1.18. Furnishing of materials

Contracts for projects shall require the contractor to furnish all materials incorporated in the work, except as otherwise authorized by the prior approval of the Administrator.

Sec. 1.19. Restrictions upon materials

No requirement shall be imposed and no procedure shall be enforced by any State in connection with a project which may operate (a) to require the use or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or (b) to prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any

greater extent than is permissible under policies of the Department of Commerce as evidenced by requirements and procedures prescribed by the Administrator to carry out such policies.

Sec. 1.20. Surety bonds and insurance

No procedure or requirement shall be imposed by any State in connection with any project which operates to restrict competitive bidding by discriminating against the purchase of a surety bond or insurance policy from any surety or insurer outside the State and authorized to do business in the State.[2]

Sec. 1.21. Subcontracting

(a) **Contractor's organization.** Contracts for projects shall require that the contractor perform with his own organization contract work amounting to not less than 50 percent of the total contract price. If any of the contract work requires highly specialized knowledge, craftmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole, such work may be designated in the advertised specification as "Speciality Items" and may be performed by subcontract. The cost of such "Specialty Items" may be deducted from the total contract price before computing the amount of work required to be performed by the contractor with his own organization.

(b) **Exception.** Upon the request of a State, the requireof this section may be modified by the Administrator for a project prior to or after the award of a contract, heretofore or hereafter made, to such extent as he may determine to be in the public interest.

Sec. 1.22. Patented or proprietary items

Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process, specifically set forth in the plans and specifications for a project, unless

(1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items; or

[2] Amended March 23, 1963, 28 F.R. 2901.

(2) The State highway department certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

Sec. 1.23. Rights-of-way

(a) **Interest to be acquired.** The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) **Use for highway purposes.** Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway departments shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with section 1.35 of the regulations in this part.

(c) **Other use or occupancy.** Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

Sec. 1.24. Labor and employment

(a) **Convict labor.** No convict labor shall be employed and no materials manufactured or produced by convict labor shall be used in the construction of a project. No convict labor shall

be employed at the site of a project after the approval of the program including the project and prior to the completion of its construction.

(b) **Selection of labor.** No procedure or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a project.

(c) **Wage rates; Interstate system projects.** The advertisement or call for bids on any contract for the initial construction of a project on the Interstate System either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.

(d) **Wage rates; other Federal-aid projects.** Contracts for the construction of projects other than those for initial construction of the Interstate System shall require that laborers and mechanics employed on such construction shall be paid rates of wages not less than the minimum rates therefor set forth in the contract for such construction as predetermined under State law or, in the absence thereof, by the State highway department.

(e) **Construction by Federal agencies.** In those cases where construction work on Federal-aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.

(a) **Requirements for agreements or orders.** Before a project for the elimination of hazards at a railway-highway crossing shall be approved for construction with the aid of Federal funds, irrespective of the Federal share of the cost of such construction, either (1) an agreement shall have been entered into between the State highway department and the railroad concerned; or (2) an order authorizing the project shall have been issued by the State public utility commission or other agency or official having comparable powers. Such agreement or order shall contain provisions specifying responsibility for

and pertinent details concerning construction, maintenance, and railroad contributions relating to the project, which, subject to 23 United States Code, section 130, and other applicable Federal law, conform to, and are not inconsistent with, the policies, classifications of projects and procedures prescribed by the Administrator. In extraordinary cases, where the Administrator finds that the circumstances are such that requiring such agreement or order would not be in the best interests of the public, projects may be approved for construction with the aid of Federal funds without requiring such agreement or order prior to such approval, provided provisions satisfactory to the Administrator have been made with respect to construction, maintenance and railroad contributions relating to the project.

(b) **Applicability of State laws.** State laws pursuant to which contributions are imposed upon railroads for the elimination of hazards at railway-highway crossings shall be held not to apply to Federal-aid projects.

Sec. 1.26. Highway planning and research projects

(a) The funds programed for highway planning and research projects under 23 U.S.C. 307(c) (1) and (3) shall be administered as a single funds, but the identity of such funds, as Interstate, primary, secondary or urban, shall be preserved.

(b) The funds programed for highway planning and research projects under 23 U.S.C. 307(c) (2) shall be administered as a single fund.[3]

Sec. 1.27. Maintenance

The responsibility imposed upon the State highway department, pursuant to 23 U.S.C. 116, for the maintenance of projects shall be carried out in accordance with policies and procedures issued by the Administrator. The State highway department may provide for such maintenance by formal agreement with any adequately equipped county, municipality or other governmental instrumentality, but such agreement shall not relieve the State highway department of its responsibility for such maintenance.

[3] Amended Oct. 19, 1965, 30 F.R. 13255.

Sec. 1.28. Diversion of highway revenues

(a) **Reduction in apportionment.** If the Secretary shall take such action as he may deem necessary to comply with said provision of law by reducing the first Federal-aid apportionment of primary, secondary and urban funds made to the State after the date of such finding. In any such reduction, each of these funds shall be reduced in the same proportion.

(b) **Furnishing of information.** The Administrator may require any State to submit to him such information as he may deem necessary to assist the Secretary in carrying out the provisions of 23 U.S.C. 126 and paragraph (a) of this section.

Sec. 1.29. Vehicle weight and width limitation

When requested by the Administrator, each State shall certify to the Administrator, with such pertinent information as he may require, whether or not its laws and regulations conflict with the limitations of 23 U.S.C. 127 as to weight and width of vehicles which may lawfully use the Interstate System within the boundaries of that State.

Sec. 1.30. Records and documents

(a) **General.** Each State highway department shall maintain or cause to be maintained all records and documents relating to the undertaking, carrying out and maintaining of each project in such form and manner as will enable the State to make available to the Administrator such information and data as he may require and shall be retained for a period of not less than 3 years from the date of the final payment of Federal funds to the State with respect to the particular project.

(b) **Toll facilities.** If Federal funds participate in a project for the construction of a toll bridge, toll tunnel or approach to a toll facility, under 23 U.S.C. 129, the State highway department shall maintain or cause to be maintained, in addition to the records specified in paragraph (a) of this section, such financial and other records relating to the construction, acquisition, income, expenditures, maintenance and the operation of the facility as will enable the Administrator to determine compliance with the provisions of 23 U.S.C. 129. Such

records shall be retained until the facility shall have been operated on a free basis for a period of at least 3 years.

(c) **Availability for inspection.** Records and documents maintained under paragraphs (a) and (b) of this section shall be available at all reasonable times for inspection by any authorized representative of the Federal Government and copies thereof shall be furnished when requested.

Sec. 1.31. Payments

States may submit requests for payments of Federal funds claimed to be due on account of a project. Such requests shall be in the form of vouchers as prescribed by the Administrator, and shall be certified and accompanied with such supporting data as the Administrator may require. Such vouchers may be submitted from time to time as the work progresses and shall be submitted promptly after completition of the project to which the voucher pertains.

Sec. 1.32. Policies and procedures

The Administrator shall promulgate and require the observance of such policies and procedures, and may take such other action as he may deem necessary for carrying out the provisions and purposes of the Federal laws and the regulations in this part.

Sec. 1.33. Conflicts of interest

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any

financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

Sec. 1.34. Secondary road plan

The approval by the Administrator of a State's certified statement of its secondary road plan, pursuant to 23 U.S.C. 117 will remain in effect for such time as the Administrator in his discretion may determine. Projects undertaken pursuant to such approved certified statement shall not be subject to the following sections of the regulations in this part: 1.10; 1.15; 1.16; 1.18; 1.19; 1.20; 1.21; 1.22; 1.24(b), (c), (d), and (e).

Sec. 1.35. Advertising

(a) **Agreements.** Any agreement entered into pursuant to the provisions of 23 U.S.C. 131 shall provide for the control or regulation of outdoor advertising, consistent with the Advertising Standards and Advertising Policy, in areas adjacent to the entire mileage of the Interstate Systems within that State, except such segments as may be excluded from application of such Standards and Policy by 23 U.S.C. 131. Such agreements may be modified, amended or supplemented as the Administrator may determine is necessary.

(b) **Informational sites.** Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the Advertising Policy and consistent with the Advertising Standards, submitted to and approved by the Administrator.

(c) **Acquisition of advertising rights.** Federal funds may participate in the cost of acquiring rights to advertise or to regulate advertising only if the purpose of such acquisition is to accomplish the objectives stated in 23 U.S.C. 131. Projects for the acquisition of advertising rights shall embrace a seg-

ment of the highway of sufficient length to promote the objectives of the Advertising Policy. Within the limits of any such segment, provision shall be made for acquiring all of the advertising rights on both sides of the highway necessary to effectuate the Advertising Policy and Advertising Standards. No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

Sec. 1.36. Compliance with Federal laws and regulations

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

Sec. 1.37. Delegation of authority

The Administrator has been delegated authority to perform the functions vested in the Secretary under Federal law, except the apportionment of Federal-aid funds among the States. The Secretary has reserved to himself the function of issuing or revising regulations.

The Administrator is authorized to redelegate any power or authority conferred upon him to the Commissioner or to any other official or employee of the Bureau of Public Roads as in his judgment will result in efficiency and economy in the effectuation of the purposes of Federal law and the regulations in this part. Any redelegation by the Administrator may include the power to make successive redelegations of authority to the extent deemed desirable by him. Delegations made under regulations heretofor in effect shall continue in full force and effect until modified or revoked.

Sec. 1.38. Application of regulations

The regulations in this part shall take effect upon publication in the Federal Register and shall supersede all regula-

tions heretofore in effect for carrying out the provisions of Federal laws.

Dated May 5, 1960.
Recommended:
(SEAL)

B. D. TALLAMY,
Federal Highway Administrator.

Issued:

FREDERICK H. MUELLER,
Secretary of Commerce.

(F. R. Doc. 60-4226; Filed, May 10, 1960; 8:48 a.m.)

Effective May 11, 1960